

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

USDC SDNY
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LONG PAINTING COMPANY,

Plaintiff,

-v-

GENERAL ELECTRIC COMPANY and
ALSTOM RENEWABLE US LLC,

Defendants.
----- X

17-cv-9975 (KBF)

MEMORANDUM
DECISION & ORDER

KATHERINE B. FORREST, District Judge:

This is an action to recover invoice charges for work done by Long Painting Company (“Long”) pursuant to a contract with defendants General Electric Company (“GE”) and Alstom Renewable US LLC (“Alstom Renewable”) (collectively, “defendants”). (ECF No. 1 (“Compl.”).) Pending now before the Court is Long’s motion for leave to file an amended complaint which would add defendants’ surety company, The Insurance Company of the State of Pennsylvania¹ (the “Surety”), and the named principal on the payment and performance bond issued by the Surety, Alstom Power, Inc.² (“Alstom Power”), as defendants. (ECF No. 50.) The motion is DENIED.

The Court does not believe this action should be in the Southern District of New York. It involves the laws of the State of Washington and events that occurred there. However, the parties have chosen, through a forum selection clause, to

¹ The Insurance Company of the State of Pennsylvania is defendants’ surety company.

² Alstom Power is the Alstom/GE entity named on the payment and performance bond issued by the surety company.

litigate this case here. The Court invited a motion to transfer the case, but none was filed—even though the Court could have granted that motion despite the forum selection clause. See, e.g., Eres N.V. v. Citgo Asphalt Ref. Co., 605 F. Supp. 2d 473, 479 (S.D.N.Y. 2009) (“When considering a motion to transfer venue involving a forum selection clause, the forum selection clause is a significant factor to be weighed along with a number of case-specific factors. A forum selection clause does not, by itself, render venue in an alternative forum improper, as venue is improper only if the statutory venue requirements of 28 U.S.C. § 1391 have not been satisfied.” (internal citation and quotations omitted)).

The Court will not allow a late amendment at this time, as it would only bring additional parties into a case that is being inconveniently litigated in this District. In addition, the amendment to add the Surety would be futile. Washington state law requires an action against the Surety to be brought in the county where the lien was filed. Plaintiff argues that a forum selection clause can waive this requirement, citing Keystone Masonry, Inc. v. Garco Const., Inc., 147 P.3d 610, 615 (Wash. App. 2006). However, in Keystone the forum selection clause was agreed to by all relevant parties. Here, the Surety is not a party to the contract containing the forum selection clause (that is, the GE Power Terms of Purchase.) (ECF No. 18 at 13.) Accordingly, the Washington statute’s requirement has not been waived, and the amendment to add the Surety would be futile.

Moreover, the fact discovery deadline is October 1, 2018, (ECF No. 30)—two months away. Allowing plaintiff to bring new parties into the case at this time


would surely cause undue prejudice and/or unreasonably delay the resolution of this case.

Accordingly, plaintiff's motion to amend the Complaint is DENIED.

The Clerk of Court is directed to close the open motion at ECF No. 50.

SO ORDERED.

Dated: New York, New York
July 31, 2018



KATHERINE B. FORREST
United States District Judge